

## § 29.09 Premature and Scattered Subdivision of Land

Revised Statutes Annotated [674:36, II\(a\)](#) authorizes municipalities to adopt subdivision regulations which:

*Provide against such scattered or premature subdivision of land as would involve danger or injury to health, safety or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire protection, or other public services, or necessitate the excessive expenditure of public funds for the supply of such services.*

The New Hampshire Supreme Court has held that this statute sets up a guide for the planning board's determination.<sup>62</sup> The board must ascertain what amount of development, in relation to what quantum of services available, will present the hazard described in the statute and regulations.<sup>63</sup> At the point where such a hazard is created, further development becomes premature.<sup>64</sup> In determining prematurity, the board may consider off-site as well as on-site circumstances.<sup>65</sup>

Whether a proposed subdivision will create scattered or premature development depends on the effect of the specific proposed development on the community, not on the effect of further development in general on the community.<sup>66</sup> The fact that a subdivision may contribute to the overcrowding of the town's school system does not cause the subdivision to be scattered or premature. The circumstances of the school facilities will not be found to constitute a danger to health, safety or prosperity.<sup>67</sup> The application of subdivision regulations designed to prevent "scattered" or "premature" development focus on a particular development, including consideration of the highest and best use of a particular tract of land, the compatibility of a particular use with the remainder of the community and the protection of the financial interests of purchasers, subdividers and the local government unit.<sup>68</sup>

In considering whether a proposed subdivision is premature, a planning board may consider the present condition of access roads. If it finds that a hazard is created by the present level of development, it may find that development is premature.<sup>69</sup> Prematurity is a relative rather than an absolute concept. At the

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<sup>62</sup> Garipay v. Hanover, 116 N.H. 34, 351 A.2d 64 (1976) (although available services were sufficient to meet the need of the present 18 homes on a town road, the court found that the construction of the proposed additional 49 homes would endanger the well-being of residents both within and without of the development and the board was within its right to declare the proposed subdivision premature).

<sup>63</sup> Garipay v. Hanover, 116 N.H. 34, 351 A.2d 64 (1976).

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<sup>66</sup> Ettlingen Homes, Inc. v. Town of Derry, 141 N.H. 296, 681 A.2d 97 (1996) (planning board improperly denied otherwise qualified 23-lot subdivision on the basis that it would contribute to overcrowding of schools. Concerns about school capacity may be a basis for growth control throughout the entire community, but is not the type of danger to health, welfare and safety that the scattered and premature subdivision regulations are designed to address in a particular subdivision application).

<sup>67</sup> Ettlingen Homes, 141 N.H. at 299-300, 681 A.2d at 99-100.

<sup>68</sup> Ettlingen Homes, 141 N.H. at 298, 681 A.2d at 99.

<sup>69</sup> Zukis v. Town of Fitzwilliam. 135 N.H. 384, 604 A.2d 956 (1992) (fact that 25 year-round residences existed in area where plaintiff proposed to create 8-lot subdivision on 42 acres did not preclude finding of prematurity; case

point where a hazard is created, further development becomes premature.<sup>70</sup> The fact that development already exists in an area and that certain problems with access already exist does not preclude a finding of prematurity. Exposing additional households to the risk that emergency vehicles would not be able to respond when services are required or other unacceptable risks may be the basis for a finding of prematurity.<sup>71</sup>

A finding that a subdivision of a parcel of land would be premature does not necessarily mean that the land cannot be developed. If the construction of certain off-site improvements is feasible, then the application may be conditionally approved upon the provision of off-site improvements which would eliminate the hazards that would otherwise cause the development to be premature.<sup>72</sup>

Adapted from 15 New Hampshire Practice: Land Use Planning and Zoning, Ch. 29, Subdivision, § 29.09 (LexisNexis Matthew Bender)

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was remanded for determination of plaintiff's proportionate share of roadway improvements necessary to eliminate prematurity concerns).

<sup>70</sup> Zukis v. Town of Fitzwilliam, 135 N.H. 384, 604 A.2d 956 (1992).

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<sup>72</sup> Land/Vest Props., Inc. v. Plainfield, 117 N.H. 817, 379 A.2d 200 (1977) (landowner could be required to pay for only that portion of the required improvements which bore a rational nexus to the development of the landowner; however, if the town's share of the expenses would be excessive, the developer could choose to unilaterally bear the municipal share that the town could not reasonably finance).